(Testimony of Gordon C. Reid.)

1944, and Exhibits AA, AO, AP, AW, AV, AU, AQ, AX, and V, which, unless I got them mixed up, are the certificates that were issued directly to the shipping company, and also the exhibit covering the Hawaiian Shipper to December, 1944, one of which covers 289 cases and the other covers 111 cases, making a total of 400 cases that is the subject matter of the testimony in this case.

The Court: After the Jury examines all of those documents will anything develop that has not already been developed?

Mr. Faulkner: Well, it might be, your Honor.

The Court: If you wish to pass them along——

Mr. Faulkner: It might be better to take these certificates and have a resume made so that the Jury will see the quantities of Department of Agriculture eggs on the floor of Nye & Nisson during this disputed period.

The Court: If you wish to pass them on——

Mr. Faulkner: I would rather pass the resume.

The Court: Pass them on if you wish.

Mr. Faulkner: I will have a resume prepared and pass the—— [3514]

The Court: Submit it to the other side.

Mr. Faulkner: That will save a lot of time.

The Court: Or you can pass these documents in the interests of time. The only thing I had in mind was to try to expedite the situation. You are repeating so many, many things here, both sides. I do not blame anyone in particular.

Mr. Faulkner: Your Honor, there was a con-

(Testimony of Gordon C. Reid.)

siderable quantity of eggs that was inspected by the Department of Agriculture.

The Court: Pass those documents on.

Mr. Faulkner: I would just as soon make a resume.

The Court: Pass them on.

Mr. Faulkner: Very well. Those are the inspections of the stockpile of eggs. These are the inspections to send to the shipping companies, inspection certificates sent to the shipping companies. These documents, your Honor, cover the 400 cases of eggs involved in the Hawaiian Shipper. [3515]

Mr. Faulkner: Q. Mr. Reid, in respect to the inspections you made covered by the certificates issued in 1944, in the months of April and May, regardless of whether they were inspections in the plant of Nye & Nissen in which an egg grading certificate was issued to that company or an inspection made for a shipping company, how did you determine whether or not the eggs involved in the inspection were medium eggs?

A. Why, that is in the candling procedure of grading eggs, we visually check for any under-size eggs and weigh individual eggs, not cases.

Mr. Faulkner: That is all.

Cross-Examination

Mr. Pratt: Q. Mr. Reid, when you inspected eggs there at Nye & Nissen's plant, who called you to come and inspect eggs?

A. The majority of times I would receive a call

(Testimony of Gordon C. Reid.)

from Mr. Goddard. There were times, however, I would receive a call from Mr. Berman.

Q. When you issued certificates such as this Exhibit AN, which relates to 15 cases for the Moore-McCormack Line, on the ship Cape Cumberland, the original certificate is sent to the shipping company representing the War Shipping Administration? A. That's right.

Q. That is right, is it not? Do you have any knowledge of whether the eggs are actually delivered to the Cape Cumberland?

A. No, I don't. [3516]

Q. You know nothing of that. That is, your certificate does not indicate delivery, does it?

A. No.

Q. It covers inspection of a number of cases, is that right? A. That is right.

Q. After you have inspected eggs, do you have any knowledge as to the disposition or delivery of those eggs? A. No, sir.

Q. Do you have any knowledge whether or not the same eggs remain in the cases you have stamped? A. No, sir.

Mr. Pratt: That is all.

The Court: Step down.

Mr. Faulkner: We will finish with him before four o'clock.

The Court: I thought you were finished.

Mr. Faulkner: Redirect examination, your Honor.

The Court: Pardon me.

(Testimony of Gordon C. Reid.)

Redirect Examination

Mr. Faulkner: Q. Mr. Reid, when you say that you had no knowledge of the disposition of certain cases of eggs, you did have knowledge that you obtained from examinations from day to day of Mr. Berman's book, did you not?

Mr. Pratt: I object to that as a leading and suggestive question, and quite improper in the circumstances.

Mr. Faulkner: Well, your Honor——

The Court: Read the question.

(Question read.)

The Court: Objection sustained. [3517]

Mr. Faulkner: Q. When you say you had no knowledge, do you mean you did not know where the eggs that you were inspecting from time to time were supposed to go?

Mr. Pratt: I object to the question as not redirect examination, or whether he knew where they were delivered or where they were supposed to be —that is quite different—I object to the question.

Mr. Faulkner: It is obvious, your Honor, that the witness, unless he participated in the delivery, would not know, but if Mr. Pratt, by his question, intends to intimate that Mr. Reid did not know that he was inspecting eggs in relation to the War Shipping orders, I just wanted to clear that up.

The Court: Ask him the direct question. I will allow that.

Mr. Faulkner: Q. You knew in April and May,

(Testimony of Gordon C. Reid.)

1944, when you were in the plant of Nye & Nissen, that you were making inspections of eggs in connection with War Shipping orders; isn't that correct?

A. Well, not exclusively War Shipping orders.

Q. No, but you knew that you were making inspections generally and for War Shipping orders?

A. That's right.

Q. Now, then, this may not be proper redirect, but I want to get one question cleared up with Mr. Reid. When you made an inspection of eggs in the months of April and May, 1944, in the plant of Nye & Nissen, on Missouri Street, during the [3518] course of those inspections all of the eggs that were tendered to you for inspection were within your presence at all times; isn't that correct?

Mr. Pratt: I will object to the question for several reasons.

Mr. Faulkner: I will withdraw it because it is leading.

Q. In other words, in April and May, 1944, you made certain inspections at the plant of Nye & Nissen? A. Yes, sir.

Q. Will you describe to the jury how you made those inspections?

Mr. Pratt: I object to this. It is not proper redirect examination.

Mr. Faulkner: I stated that to your Honor.

The Court: He indicated that.

Mr. Pratt: Very well.

(Testimony of Gordon C. Reid.)

The Court: You may answer. Briefly tell the jury.

The Witness: The eggs were on the flats, or boards in the plant and we would receive a call to inspect the eggs, a lot of eggs, the number of which I could not tell you now. We would sample those eggs and take a sample over to the candling booth and candle the eggs.

Q. This candling booth, is that the one specially prepared over at the door?

A. In most of the cases, yes.

Q. Right at the entrance?

A. That's right.

Mr. Faulkner: That's all. [3519]

Mr. Pratt: That's all.

The Court: Step down. The jurors may be excused until ten o'clock tomorrow morning.

(An adjournment was thereupon taken until tomorrow, Wednesday, March 27, 1946, at ten o'clock a.m.) [3519-a]

Wednesday, March 27, 1946, 10:00 o'clock a.m.)

The Clerk: United States vs. Nye & Nissen.

Mr. Pratt: Ready.

Mr. Sullivan: Ready.

The Court: Waive the roll call, stipulated all the jurors are seated in the box. Proceed, gentlemen.

EDWARD LeROY MENGES

a defendant herein, called on his own behalf; sworn.

The Clerk: Q. Will you state your name?

A. Edward LeRoy Menges.

Mr. Faulkner: If your Honor please, before the examination of Mr. Menges proceeds I would like to inquire through the Court when Counsel intends to cross-examine Mr. Berman.

Mr. Pratt: When?

Mr. Faulkner: In other words, we produced the records yesterday.

Mr. Pratt: I know, but the records are quite voluminous and I would like to have a little more time to examine them.

Mr. Faulkner: I would like to know when because we have other people to bring in.

Mr. Pratt: Say on Friday? This is Wednesday. The day after tomorrow?

Mr. Faulkner: I think the examination of Mr. Berman [3520] should be completed. When you brought records in for us you brought them in in the morning and we immediately cross-examined with respect to them.

Mr. Pratt: Well, I have not made my own ex-

(Testimony of Edward LeRoy Menges.)

amination. They have been examined to some extent by the FBI accountants, agents. I would like to make my own examination.

Mr. Faulkner: You have a resume of them all, Mr. Pratt.

Mr. Pratt: I should like to have until Friday morning, if the Court please.

The Court: Very well. Let us proceed with this witness.

Direct Examination

Mr. Sullivan: Q. What is your full name, please?

A. Edward LeRoy Menges.

Q. You are one of the defendants in this action, are you not? A. Yes, sir.

Q. Where do you live?

A. 535 Athens Street, San Francisco.

Q. How old are you? A. Fifty-three.

Q. Are you married?

A. Yes, sir, and I have three children.

Q. Are you employed? A. Yes, sir.

Q. By whom are you now employed?

A. By Nye & Nissen, Inc.

Q. Mr. Menges, were you working for Nye & Nissen in June of 1941 or around June of 1941?

A. Yes, sir.

Q. At that time in what capacity did you work for Nye & Nissen?

A. I was the egg foreman. [3521]

Q. Where did you work for Nye & Nissen at that time?

(Testimony of Edward LeRoy Menges.)

A. 324 Townsend Street.

Q. Is that the Townsend Street plant that we have been referring to here continuously in court?

A. Yes, sir.

Q. At that time where generally was the egg candling room in the plant of Nye & Nissen?

A. It was close to Bluxome Street.

Mr. Sullivan: At this time, your Honor, may we have the board with the illustration of the Townsend Street plant brought out?

The Court: Very well.

Mr. Sullivan: Q. Mr. Menges, do you recognize from the illustration which is on the board here, and which was drawn by the witness Henry Berman, the general location of the egg candling room at the plant on Townsend Street at that time?

A. I do.

Q. Would you come down here and generally indicate to the Jury where that room was?

A. It was located—this would be Bluxome Street—it was located on the east side of the building close to Bluxome Street.

Q. Were you in charge of this particular area here at that time? A. I was.

Q. And did you have any employees of Nye & Nissen at that time under your supervison?

A. I had candlers under my supervision. [3522]

Q. And generally speaking in connection with your work as an egg candler where did you generally work yourself? Would you point that out?

A. In this area on the floor here.

(Testimony of Edward LeRoy Menges.)

Q. Would you take a piece of chalk, Mr. Menges, please, and just draw a line to indicate the general area where you worked as an egg foreman? Will you make that as a sort of circle to take in an area and not merely a line? Would you mark that "m-1"? Now, "m-1" indicates, does it not, Mr. Menges, the general location of your working activities at that time at the plant?

A. That is correct.

Q. Will you go back to the witness stand. Was this candling room that you mentioned a room?

A. Yes, sir.

Q. Was it fully enclosed? A. Yes, sir.

Q. How did one get into the room?

A. Through a door, I would call it, on the south end.

Q. And by south end do you mean the end nearer Townsend Street or the end nearer Bluxome Street? A. Townsend Street.

Q. At that time where were these egg candlers who were under your supervison working?

A. They would be inside of the room.

Q. At that time, generally speaking, how many egg candlers did you have under your supervision?

A. Well, generally five.

Q. Was there provision for more than five egg candlers at that time? A. Yes, sir. [3523]

Q. How many egg candling lights did you have in the plant at that time? A. Ten.

Q. Were those lights all inside the area that is

(Testimony of Edward LeRoy Menges.)

designated "Candling Room" here on the illustration? A. Yes, sir.

Q. Did the wall which faced the opposite side of the building go up to the ceiling of the plant?

A. It was about between ten and twelve foot high.

Q. Did it have any openings in it, Mr. Menges?

A. Yes, sir.

Q. What openings did it have in it at that time?

A. Well, it had the door and also a place to shove the eggs in and also a transom.

Q. Is the door that you mentioned the same door that you mentioned a little while ago as being at the south end of the candling room?

A. Yes, sir.

Q. What was this place, as you call it, to shove the eggs through? What was that like at that time?

A. It was an opening the length of the candling room, and it had a canvas curtain in front of it.

Q. Do I understand you to say that openings went throughout the entire length of the candling room? A. Yes, sir.

Q. How long was the candling room?

A. About sixty foot long.

Q. And then there was a slit, was there, all the way down the candling room through which you pushed the egg boxes, is that correct?

A. Yes, sir.

Q. About how high up from the floor was that slit? [3524] A. The top or the bottom?

(Testimony of Edward LeRoy Menges.)

Q. The bottom of it?

A. The bottom would be about two foot.

Q. Was there a bench near the slit?

A. Yes, sir.

Q. What was the bench used for?

A. That was used to put the eggs on for the girls to pull in to candle, and also to shove out, and it was my workbench. I used to nail and to open the cases.

Q. How high was the slit or aperture through which the girls pulled the egg boxes to candle the eggs?

A. A case of eggs is 13 inches high and it still gave a little room so they could get their hands on top of the case to pull it in.

Q. Was the slit that you have been talking about wide open or did it have anything on it?

A. It had a canvas.

Q. What particular kind or color of canvas?

A. Well, over there we were using a brown canvas, a duck, and it had slits in it about every twelve inches.

Q. And what was the purpose of the slits in the canvas?

A. So when we would pull a case in or push a case out it would not push the whole curtain.

Q. Now, you mentioned another opening in the wall of the candling room, which we will for purposes of convenience, call the outside wall. What was that other opening, Mr. Menges?

A. It was an opening about twelve inches high,

(Testimony of Edward LeRoy Menges.)

sort of a transom, and it would close or you could leave it down and there would be brackets to catch it and form a shelf. [3525]

Q. Was it on hinges? A. Yes, sir.

Q. How long was it with respect to the length of the outside wall of the candling room?

A. It was the same length.

Q. Was it all in one section or was it in sections?

A. The sections were about ten foot long.

Q. So that would you say that approximately this transom opening that you have talked about was divided into about six sections? Would that be correct? A. About six sections.

Q. You mentioned something about this transom being open. How was the transom opened?

A. It was held in place with a button. You could turn the button and the transom would come down and catch on the brackets, and that would form a shelf.

Q. And so that when the transom was brought down it opened outwards, did it? A. Yes, sir.

Q. And when it was brought down did it rest on something? A. On the brackets.

Q. And did each of the sections that you have described rest on something?

A. On the brackets.

Q. And after this transom had been brought down would you say that the transom was then approximately at a ninety degree angle to the exterior wall of the candling room? A. It was.

(Testimony of Edward LeRoy Mehges.)

Q. Now was this shelf, which resulted from the transom, used for anything?

A. I would use it to put my covers, when I would take the covers off the cases to shove in to the [3526] girls, I would place them on this shelf.

Q. In other words, during the summer, around June of 1941, who had charge of the candling of eggs that were candled at the plant of Nye & Nissen? A. I did.

Q. Did you receive instructions from anyone with respect to the candling of eggs?

A. Mr. Goddard would give me instructions, Mr. Berman would give me instructions.

Q. When you say orders do you mean commands or do you mean a purchase order?

A. A written order.

Q. An order for eggs, is that what you are talking about? A. Yes.

Q. You do not mean an order of instructions?

A. No, sir.

Q. Let us come to Mr. Goddard. You say Mr. Goddard would give you instructions, is that correct? A. He would give me instructions.

Q. And would those instructions relate to the grade of eggs that you were to candle?

A. Yes, sir.

Q. And at that time did you then carry out Mr. Goddard's instructions? A. I would.

Q. In addition to Mr. Goddard's instructions did your department fill orders for Mr. Berman's department?

(Testimony of Edward LeRoy Menges.)

A. The majority of my work was filling orders for Mr. Berman.

Q. Will you explain just what type of orders you filled at that time for Mr. Berman's department?

A. I would fill orders—every morning he would give me a list of what he [3527] needed for the following day, and I would consult with Mr. Goddard and tell him what quality—quantity of eggs I would need, and he would designate a lot and then I would proceed to candle them.

Q. Were these orders that you have mentioned in any way for Government agencies?

A. No, sir, that was for the city customers.

Q. Did you in turn give instructions to anyone with respect to the candling of eggs at that time?

A. To my candlers.

Q. Mr. Pineda testified, Mr. Menges, in substance that in June or around June of 1941, there was a transaction in which you participated concerning an inspection of eggs by Colonel Foster, and in substance that you and other people accomplished a switching of samples of eggs so that the inspector, Colonel Foster, examined samples which he had not in fact drawn from the lot, and I am going to ask you, Do you remember that testimony here in court given by Mr. Pineda?

A. I heard the testimony.

Q. Do you recall any such incident happening around June of 1941? A. I do not.

Mr. Sullivan: Would you read that, please?

(Testimony of Edward LeRoy Menges.)

(Answer read.)

Mr. Sullivan: Q. Do you recall around June of 1941 seeing an Army inspector by the name of Colonel Foster around the plant of Nye & Nissen?

A. I never seen Colonel Foster in [3528] my life.

Q. So you did not see him in 1941?

A. No, sir, nor at any other time.

Q. Did you ever see any other Army inspectors around your egg candling department at that time?

A. There were plenty of Army inspectors.

Q. Will you tell the Jury some of the names of some of the men that you remember, if you do remember their names about that time?

A. There was Colonel Kiehner, Colonel Kielsmeir, Colonel Dean, Captain Andrews, Lieutenant Joneschild, Lieutenant Jones and a lot of enlisted men.

Q. How about Colonel Hand?

A. And Colonel Hand, surely.

Q. You identify him, don't you?

A. Yes, sir.

Q. Did these men come in alone or did they come with someone at that time?

A. There were at least two and up to six or eight at a time.

Q. And when you say at least two and up to six or eight, are you talking about civilians or Army Personnel?

A. They would all be Army personnel. Some of

(Testimony of Edward LeRoy Menges.)

them would be officers and some of them would be enlisted men.

Q. When the Army came in at that time with its inspectors, or when the Army inspectors came in for the purpose of an inspection, did you have anything to do with designating of a lot of eggs to be inspected to the Army? A. I would not.

Q. At that time, at the time we are talking about, where [3529] generally were the lots of eggs that were ready for inspection, if you know, in the plant of Nye & Nissen?

A. Well, they would be in the room there between the candling room and Mr. Goddard's office, or they could be over between the freezer and the rest rooms.

Q. Did you ever assist the Army inspectors?

A. At their request.

Q. Did you ever in the course of assisting Army inspectors see them draw any samples from a lot of eggs that was designated for inspection?

A. I have.

Q. At that time how would they do that, Mr. Menges? How would they draw the samples?

A. Well, the majority or each officer or inspector would have his own mark that he would place on the end of a case, and they would either take them from the pile or they would ask assistants to take them.

Q. When the Army inspectors came in and a lot was designated for them, did they do anything with respect to marking the samples that they were taking?

(Testimony of Edward LeRoy Menges.)

A. They would mark their samples.

Q. Where would this usually take place?

A. In the room between the candling room and Mr. Goddard's office.

Q. And at that time where were the eggs or how were they usually stacked when the samples were drawn?

A. Most generally on trays, and they would be thirty to a tray.

Q. When you were requested to assist the Army inspectors what [3530] would you do with respect to the samples that they had drawn?

A. With the samples that they had marked?

Q. That they had marked.

A. Then I would draw them from the stack of eggs.

Q. Did you ever on any occasion at this time tell an Army inspector what case of eggs in a lot of eggs he was to take as a sample?

A. No, sir.

Q. Did you ever at this time indicate or draw a sample from a lot of eggs and give it to an inspector of the Army? A. I did not.

Q. When you were called upon to assist the Army, Mr. Menges, and at their request what did you do with respect to the cases that they had marked?

A. I would pull them from the stack or the tray and place them in a dump.

Q. And when you did that where were the Army inspectors? A. They would be right there.

Q. And did you ever at any time put in one of

(Testimony of Edward LeRoy Menges.)

these so-called dumps a case of eggs that had not been indicated and selected by an Army inspector?

A. All of those would have a mark on them that they indicated.

Q. Now, will you answer the question that I asked you before: in other words, at any time did you ever select and put in a dump a case other than those that had been marked by the Army inspector?

A. No, sir.

Q. After you had the cases of eggs in dumps what did you do [3531] with them?

A. I would take the hand truck and truck them back in the vicinity of the candling room.

Q. And when you say in the vicinity of the candling room are you referring to the area in the lower left-hand portion of this diagram?

A. In the front of the candling room.

Q. On occasions did that trucking operation involve a great distance or did it involve a small distance?

A. Mostly—at least halfway on the floor.

Q. And while you were trucking these eggs down where were the Army inspectors?

A. They would be along with them.

Q. In other words, did you follow their instructions?

A. Yes, sir.

Q. Did you ever try to give them directions?

A. No, sir.

Q. And when you got the eggs down here in the room that you have indicated what did you do with them?

(Testimony of Edward LeRoy Menges.)

A. At their request I would open them and place them on the candling bench.

Q. Let me ask you a couple of questions about this candling bench: I do not think I went into it. You told us that there is a candling bench near this slit in the exterior wall of the candling room, is that correct?

A. At the lower part of the slit.

Q. Is that on the same level as the platform which holds the eggs inside the candling room?

A. It is a continuous bench from the outside to the inside. [3532]

Q. About how far at this side does the candling bench itself extend beyond and out into the open area—about how far did it extend beyond the exterior wall in that candling room, if you remember?

A. The bench would be, I would say, four foot and a half long, half of it inside and half outside.

Q. At any time while you were trucking eggs from the area which you have designated as the warehouse area down to where the Army told you to truck them, these samples that they had drawn, did you ever put other eggs in their place?

A. No, sir.

Q. Did you ever put other cases of eggs in place of the samples the Army took? A. I did not.

Q. When you finally brought the eggs down to the area around the candling room, did you always open the cases? A. Not always.

Q. When would you open the cases, Mr. Menges?

A. At the request of the inspector.

(Testimony of Edward LeRoy Menges.)

Q. Would there be occasions when you did not open the cases? A. There would.

Q. Would there be occasions when someone else opened the cases? A. Yes, sir.

Q. Who would be the other parties who opened the cases?

A. At times, why, the enlisted men accompanying the inspector would open the case.

Q. When you were opening the cases where would the Army men be?

A. They would be there. [3533]

Q. When you brought these cases down, what if anything, did the inspector, whoever he might be at that time, do? A. The Army inspector?

Q. Yes.

A. He would watch me open the case, and most generally they would always—well, as a rule they would request that their mark be placed on the bunch first.

Q. What do you mean when you say they would request that their mark be placed on the bunch first?

A. So that when they pulled the eggs in, all they would have to do was glance at the end and see that it had a mark on it.

Q. Did the inspector then go into the candling room? A. Yes, sir.

Q. Did he go to any particular place in the candling room that you remember?

A. Well, he would have to go where the eggs were placed.

(Testimony of Edward LeRoy Menges.)

Q. Did he select any particular light on the occasions that he inspected?

A. Oh, no, they wouldn't do that.

Q. So he might have candled at this time at any one of the ten lights along the candling room?

A. Yes, sir.

Q. Then what happened to the cases?

A. As a rule, if it was a small inspection, they would pull all the cases in at one time and then proceed to make their inspection.

Q. And if it were not a small inspection what happened to the cases?

A. As they pulled a case in I would put another case on the bench and open it up. [3334]

Q. After the Army man had inspected the samples or the first case of samples, what if anything did he do with the case?

A. Sometimes he would shove it back out on the bench.

Q. Did he ever keep the case in there?

A. A lot of times they would keep the sample until they had made their inspection.

Q. On those occasions what would he do?

A. Shove all out at one time.

Q. So that you would receive all the samples at one time? A. Yes, sir.

Q. And then would he make any request of you with respect to the handling of the samples that he had just shoved out?

A. Well, I would always nail them up unless he had an enlisted man there to do that.

(Testimony of Edward LeRoy Menges.)

Q. Did an enlisted man ever nail up cases that had been inspected? A. Surely.

Q. Now, Mr. Menges, when you had shoved a sample case of eggs that had been selected by the Army inspector and brought down to the inspector as you have described, when you had shoved that in to him to be inspected and he subsequently shoved the eggs out to you, did you ever reverse that case, turn it around and send the same case back in to him for inspection? A. No, sir.

Q. Did you ever do that at any time?

A. No, sir.

Q. Did you ever instruct anybody to do that?

A. No, sir. [3535]

Q. Did you ever see anybody do that?

A. No, sir. Mr. Sullivan, it would be impossible to do that because they already have a mark on the case. It would only be on one end of the case, and if you would reverse a case they would see at once that it wasn't—they would look for their mark.

Q. At any time prior to the occasions when the Army inspector would draw samples from a lot designated to him out on the floor of that warehouse and inspected in the candling room, did you prepare special cases of eggs which were of a high quality or of a preferential quality and in the place of the samples he had drawn submit those cases to him? Did you ever do that? A. I did not.

Q. You recall that testimony given here by Mr. Pineda, don't you? A. I do.

Q. Did that ever occur? A. No, sir.

(Testimony of Edward [illegible] Menges.)

Q. Did you ever have any secret locations about this plant, either in the butter room or behind the back door where you placed such preferential cases of eggs or cases containing a special quality of eggs which you submitted to the inspector at any time during the course of an inspection?

A. No, sir.

Q. Did you ever see anybody do such a thing,

A. No, sir.

Q. Did you ever give any instructions to anybody to do such a thing? A. No, sir.

Q. Mr. Pineda testified in this courtroom with respect to this period of time, Mr. Menges, that before Colonel Foster came in [3536] to inspect this lot you and Mr. Pineda prepared certain cases which he called samples, and there were other cases which came out from the candler at the same time called cutouts, and that the cases which he called samples were secreted about the plant and then surreptitiously given to the inspector in the place of the actual samples he had drawn. Do you remember that testimony? A. I remember the testimony.

Q. Do you know what the word "samples" means with reference to inspections at the plant?

A. Yes, sir.

Q. What did it mean?

A. It would be the case of eggs that the inspector had selected for his inspection.

Q. Did you ever hear that term used in connection with cases of eggs graded by your candlers and

(Testimony of Edward LeRoy Menges.)

having nothing to do with the cases selected by an inspector? A. No, sir.

Q. Did you ever instruct candlers to prepare samples or sample cases of eggs?

A. No, sir.

Q. Did you ever see anybody else about the plant at that time preparing any such samples or sample cases of eggs? A. No, sir.

Q. Did you use the word cutout in connection with your system of candling at that time at Nye & Nissen? A. I did not.

Q. Did you ever hear that word used there?

A. No, sir.

Q. Mr. Menges, Mr. Berman testified that your system of candling at times was such that when the so-called samples or sample cases came out on the right-hand side of the candler and these so-called cutouts came out on the left-hand side of the [3537] candler, that you and he would put hidden marks, usually in pencil, about the cleat or certain portions of the sample cases. Do you recall that testimony?

A. Mr. Berman never assisted me on the egg bench

Q. I may have used unconsciously the wrong name there, and I apologize to Mr. Berman. I meant to say, Mr. Menges, Mr. Pineda testified in this courtroom that a certain lot of sample cases of eggs were caused to come out on the right-hand side of the candling light and other cases of eggs called cutouts on the left-hand side of the candling light, and that then your system of operations in the cand-

(Testimony of Edward LeRoy Menges.)

ling room was such that you and Mr. Pineda would put secret marks on the cases, which he called samples, and put them away in some secret position or some secret location; do you recall that testimony?

A. Yes, sir.

Q. Did that ever occur?

A. It did not.

Q. Did you ever put secret distinguishing marks on cases to distinguish their quality?

A. I did not.

Q. Did you ever instruct anybody to do that?

A. No, sir.

Q. Did you ever see anybody do that?

A. No, sir.

Q. Mr. Pineda also testified that distinctions were made or distinguishing marks were made between cases of eggs by applying to the top of the case a certain type of cover and in instances a full cover would be used as the distinguishing mark of a high quality case of eggs and a double cover or a [3538] a two-piece cover of a lower quality of eggs. Do you recall that testimony?

A. I recall that testimony.

Q. Did you ever have a practice at the plant of Nye & Nissen at the time we are talking about of putting a full cover on certain quality eggs and a double cover or two-piece cover on other quality eggs? A. Never did.

Q. Did you top eggs, as they say, during the course of your operation at this time?

A. Yes, sir.

(Testimony of Edward LeRoy Menges.)

Q. What does that mean?

A. That would mean to put the cover on the case of eggs.

Q. How was that operation gengrally performed at that time?

A. If you were taking a full cover from the case you were giving the candler to work, you would in turn use that cover back on any case that came out.

Q. Was there any particular practice of putting full covers on one class of cases and two-piece covers on other classes of cases of eggs?

A. No, sir, it was not.

Q. When the Army inspector at this time was inside the candling room candling, could you see him? A. Oh, sure.

Q. How could you see him?

A. By looking through the transom.

Q. Was the transom open? A. Sure.

Q. Was it generally open?

A. Practically all the time.

Q. Could he see you? A. Sure.

Q. What portion of him or his body did you see? [3539]

A. Our eyes would meet across the transom.

Q. I don't know whether I asked you how high that transom was, Mr. Menges, but if I did not I will ask you at this time.

A. I would say it would be about, oh, a little over five feet, a couple of inches over five feet.

Q. Mr. Pineda testified that in the course of

(Testimony of Edward LeRoy Menges.)

the operations during an inspection of Colonel Foster at the time I am talking about in June—as he put it, around June of 1941—and in the course of the operation of submitting surreptitiously previously prepared sample cases to Colonel Foster, Colonel Foster's mark was imitated on the case. Do you recall that testimony?

A. It could not be Colonel Foster because I never seen Colonel Foster. Colonel Foster never made an inspection in that building.

Q. But do you recall the testimony?

A. Yes.

Q. Did you ever see the mark of any Army inspector imitated on a case by an employee of Nye & Nissen and then that case substituted for a sample which had been actually drawn by the Army inspector? A. No, sir.

Q. Did you ever do such a thing?

A. No, sir.

Q. Did you ever instruct anybody to do such a thing? A. No, sir.

Q. While the Army inspector were candling the eggs which he had drawn as samples, Mr. Menges, around June of 1941, would he at any time indicate to you or to any employee of Nye & Nissen [3540] that the samples or the lot had passed?

A. Very seldom.

Q. On occasions that he did indicate it, when with reference to the completion of the inspection of his cases did he so indicate that the lot or samples had passed?

(Testimony of Edward LeRoy Menges.)

A. It would be at the end of his inspection.

Q. Did he ever indicate to you or to anyone else that a lot had passed before he had completely finished all of the samples that he had drawn?

A. I wouldn't—no, he never did, because I don't think he could do that.

Q. Did you ever hear Mr. Goddard go up to an Army inspector at this time and ask him if the lot was all right, and after being advised by the inspector that it was, proceed to switch eggs? Did you ever hear such a thing done?

A. I heard the testimony.

Q. You heard the testimony. Did that occur?

A. No, sir.

Q. Have you ever asked an Army inspector ahead of time if a lot was passing so that you could switch eggs? A. No, sir, I did not.

Q. You mentioned that on some occasions they advised you that the lot was passing or was going to be accepted. Did they always do that?

A. That would—I don't believe I said that they advised me that it was passing. I might ask them how the eggs were and they might say, "O.K. so far."

Q. But after the lot had been completely inspected what would the Army inspector do then?

A. He would proceed to stamp [3511] that lot of eggs that he had made the inspection of.

Q. Would he come out of the candling room?

A. Yes, sir.

(Testimony of Edward LeRoy Menges.)

Q. When he came out of the candling room where would he usually go?

A. To the lot of eggs that he had drawn the samples from.

Q. Did he ever give you any instructions after he had come out of the candling room with reference to the samples that were outside the candling room?

A. He would tell me to bring them up with the rest of the lot.

Q. Would you do that? A. I would.

Q. So that the samples would be brought back to the lot from which they were drawn?

A. Yes, sir.

Q. During the time that you were bringing them back where was the Army inspector?

A. He or his assistant would be stamping the lot of eggs.

Q. And during the time that you were bringing them back was the Army inspector in clear view of you? A. Oh, sure.

Q. Did it ever occur that he would walk back with you?

A. To get his samples, do you mean?

Q. No, when the samples were coming back to the lot?

A. Oh, yes, he would tell me—he might just step outside of the candling room there and say, "Bring them up, Ed."

Q. And then would you do that?

A. Yes, sir.

(Testimony of Edward LeRoy Menges.)

Q. And after the samples were brought back to the lot what, if anything, would the Army do?

A. They would proceed to [3542] stamp the lot of eggs.

Q. Did they ever ask you to assist them in stamping the eggs that had passed?

A. They never did.

Q. How would they stamp the eggs?

A. With the Veterinary Corps stamp.

Q. And who would do the stamping?

A. Either the inspector or his assistant.

Q. Now, Mr. Pineda testified with reference to this particular inspection that I have been talking about, Mr. Menges, around June of 1941, that he heard Mr. Moncharsh tell Mr. Goddard to take a lot of eggs that was involved in this case and to take out of them only the Black Rots and the Leakers so that there would be a certain number of samples and a certain number of cutouts, and then the eggs in question were to be used as samples in connection with this Army order, which was a Large Grade A order. Do you recall that testimony?

A. I recall the testimony. [3543]

Q. Did you, around June of 1941, ever hear Mr. Moncharsh giving any instructions to Mr. Goddard?

A. I did not.

Q. Did Mr. Moncharsh incidentally ever give you instructions at that time?

A. He would not.

(Testimony of Edward LeRoy Monges.)

Q. You received your instructions from whom?

A. From Mr. Goddard.

Q. Reference was made here by Mr. Pineda in his testimony about this lot that it was supposed to meet a Grade A for the Army. Do you recall the testimony?

A. I recall the testimony.

Q. Under the system of candling that prevailed around June of 1941 in your candling department, how would a lot of eggs be candled for Grade A? Will you explain that to the ladies and gentlemen of the jury?

A. Mr. Goddard would designate a lot of eggs and he would tell me to make an extra—he would never tell me who they were *form*, but he would just give me a grade, like an extra or a standard. If he wanted extras he would tell me extras. And then I would proceed to take the eggs to the area of the candling room, place them on the bench, and instruct the girls that I wanted a grade extra.

Q. When you are talking about an Extra, that is a name grade for what letter grade?

A. For the A grade.

Q. And when you are talking about a Standard, that is the name grade for what letter grade?

A. A B grade.

Q. Assuming that you were at this time having your candlers candle a Grade A Large, what cases would come out on the righthand [3544] side of the candler? How many? A. One case.

Q. And what quality of eggs under your system

(Testimony of Edward LeRoy Menges.)

of candling, would be contained in the case that came out of the right-hand side of the candler?

A. That would be the Extra or the A grade.

Q. Extra or A grade? A. Yes, sir.

Q. And would even that box contain a higher quality than A?

A. It would be an A or better, or an Extra or better.

Q. Now, A or better or Extra or better, when you say those things, you are saying the same thing, is that correct? A. Yes, sir.

Q. When the candlers were then grading for A and had one box coming out on their right-hand side, did they have some boxes coming out on their left-hand side?

A. They would have two grades coming out on the left-hand side.

Q. And what would those grades be, Mr. Menges?

A. That would be a Standard and a Trade.

Q. And would the eggs which were standards or candled as standards be in different boxes than the eggs that were candled as Trades?

A. No, sir.

Q. I do not mean a different type of box, Mr. Menges, but I mean when the candlers were candling for Grade A Large and Grade A's came out on the right-hand side of the candler, what grades came out on the left-hand side of the candler?

A. Would be the Standard and the Trade.

(Testimony of Edward J. Roy Mungis.)

Q. What I am asking is this: Are the eggs that are Standards and Trades in the same egg crate?

A. No, sir, that would be a separate case for each grade.

Q. Where with respect to the candler's candling light would the box of Standards come out?

A. That would be the first case on her right-hand side.

Q. Where with respect to that case, the case of Standards, under your existing practice, would the case of Trades come out?

A. That would be the next case to her left.

Q. Was it apparent to you then on the outside of the candling room as to what qualities of eggs were coming out in the respective positions on the bench?

A. That was always my instructions to my candlers; so you can go from one bench to another and you would always find the same set-up.

Q. A reference was made here in the testimony of Mr. Pineda that there were to be only two grades candled by the candler. Although he called them samples and cut-outs, he did designate only two grades. Do you recall that testimony?

A. Yes, sir.

Q. Let me ask you this question: Assuming that only two boxes came out from the candler, one on the right-hand side of the candler and one on the left-hand side of the candler, under your existing practice, and having in mind your instructions at

(Testimony of Edward LeRoy Menges.)

that time to your candlers, would that be the method of candling a Grade A Large?

A. No, that would be the standard and the Trade. [3546]

Q. That would be a Standard and a Trade. In other words, assuming that you had such a situation, would you be able to tell me what type of eggs that were being candled at that time?

A. I didn't understand the question.

Q. I will make the question clearer, Mr. Menges: Assuming that you had a situation where there was one box only coming out on the right-hand side of the candler and one box coming out on the left-hand side of the candler, would you be able to recognize from that distribution what grade was being candled? A. Yes, sir, all the time.

Q. And what grade would you be candling under that situation?

A. That would be your Standard on the candler's right, and the Trade on your left.

Q. Assuming you had given instructions for the candling of a grade of Standards, where, then, would the Standards in this instance be pushed out on the bench?

A. That would come out on the candler's right-hand side.

Q. And would there be any cases coming out on the candler's left-hand side?

A. The Trade would come out on the left-hand side.

Q. Now, Mr. Pineda testified in this courtroom,

(Testimony of Edward LeRoy Menges.)

Mr. Menges, that in the late spring of 1942 Nye & Nissen were putting up an order for Mr. Moosman to inspect, and that he saw Peewee eggs coming out from the candlers. Do you recall that testimony? A. I do.

Q. Do you recall the incident?

A. No, sir, I do not. [3547]

Q. Did you ever see Peewee eggs on the plant of Nye & Nissen at this time on Townsend Street?

A. Occasionally.

Q. Do you know where they would come from?

A. They would come from other plants.

Q. Did you, under your existing practice of candling at the time, candle Peewee eggs?

A. I did not.

Q. Did you ever give any instructions at that time to your candlers to candle Peewee eggs?

A. No, sir.

Q. Did you ever tell your candlers, for instance, at that time, in the candling operation, to take a certain type of egg, put it in a certain box, and to put a little card on it marked "Peewees"? Did you ever do that? A. No, sir.

Q. Did you ever see it done?

A. On occasions.

Q. Did you ever see it done at that time in your candling room?

A. Not as long as I was in charge of the bench.

Q. Have you ever seen cards with, for instance, "Pullets" on them? A. I have.

(Testimony of Edward LeRoy Menges.)

Q. The word "Pullets"? Under what circumstances have you seen such cards?

A. Well, either in Mr. Berman's stock pile or going to the breaker room.

Q. Where usually would cases with "Pullets" marked on them usually come from?

A. The various plants.

Q. Did you ever have a candling designation known as Pullets or Peewees?

A. No, sir, I never did.

Q. Now, you know Colonel Hand, of course, don't you? A. Yes, sir. [3548]

Q. Mr. Pineda testified here in court at about the winter of 1941, and later stating that by that he meant February of 1941, Colonel Hand came in to inspect some eggs, and in the course of his inspection, and after he had drawn his samples, the lot of fresh eggs from which he had drawn the samples was taken off the floor and you and Mr. Pineda and probably other employees of Nye & Nissen substituted other eggs which were storage eggs, or eggs of an inferior quality. Do you recall that testimony?

A. I recall the testimony.

Q. Do you recall any such incident having happened? A. I do not.

Q. Did you at that time, in February of 1941, candle storage eggs at your plant?

A. I would say there would not be no storage eggs at that time of the year.

Q. Why would you say that?

(Testimony of Edward LeRoy Menges.)

A. It would be too late in the season for storage eggs.

Q. When are eggs usually put in storage?

A. Around February, starting in in February.

Q. Is that the time of the year that eggs are taken out of storage usually?

A. They would all be out by that time—before that time.

Q. Did you, in that year 1941, handle storage eggs, for instance? A. Yes, sir.

Q. When you candled storage eggs at the plant of Nye & Nissen, generally speaking, from your experience, into what grades would you candle?

A. You could candle them into an Extra, a [3549] Standard, and a Trade.

Q. Now, Mr. Pineda testified that on this occasion that I have referred to, Mr. Menges, in February of 1941, these storage eggs were put up for a CCC order in cases with strips. Do you recall that testimony? A. Yes, sir.

Mr. Pratt: May I ask when was this?

Mr. Sullivan: February of 1941.

Q. In the course of your candling operations, have you had occasion to see cases of eggs put up in strips?

A. I have instructed the candlers to do that.

Q. Just what do you mean when you say "strips"? What were they like?

A. It would be, oh, about a 3-inch gummed tape. It would be paper with gum on it, and you would take two of them and put one of them at right

(Testimony of Edward LeRoy Meiges.)

angles with the other in one-half of the case, put your mape on top of it, your filler in, and then proceed to fill that side of the case up, and you would do likewise on the other side.

Q. In other words, do I understand your testimony to be that these gum-like, ribbon-like pieces of paper were brought all the way down the bottom of the case and then up on the top of the five——

A. The five layers.

Q. The five layers of the case, is that correct?

A. You would even take your bottom mape out of your case and start right from the bottom.

Q. That formed a sort of ribbon around the 15 dozen, is that [3550] correct? A. Yes, sir.

Q. You recall that having been done at your plant at that time?

A. Yes, sir, we have done that.

Q. Did you ever see Colonel Hand, or any Army officer, inspect a case of eggs that was packed that way? A. I never did.

Q. Did you ever see them inspect by any Government official? A. I have.

Q. By whom?

A. By the Department of Agriculture.

Q. Now, Mr. Pineda testified that on this occasion while Colonel Hand was candling the samples which he had withdrawn from a lot of fresh eggs and was inspecting the samples, the cases of fresh eggs from which he had drawn the samples were taken off the floor into a cooler and from another cooler storage eggs which had been previously

(Testimony of Edward LeRoy Menges.)

prepared for this purpose and had little strips on them were substituted in the place of the fresh eggs, and he testified that you were there on that occasion. Now, do you recall that testimony?

A. I recall the testimony.

Q. Do you recall any incident ever having happened like that? A. I do not.

Q. Did you ever, Mr. Menges, at any time after Colonel Had had withdrawn the sample and was inspecting eggs, take other eggs and put them and substitute them for the lot of eggs which had been designated to him for inspection?

A. I did not.

Q. Did you ever instruct anybody to do such a thing? A. I did not. [3551]

Q. Did you ever see anybody do such a thing?

A. I did not.

Q. Have you seen Colonel Hand candle eggs when he was making an inspection?

A. I have.

Q. And when he was in the candling room could you see him? A. Yes, sir.

Q. And could he see you?

A. He could, if he would straighten up.

Q. Mr. Pineda testified that about two or three days later—this is in February of 1941—this operation was repeated and the same kind of substitution was done again, and I will just ask you generally if you recall that testimony first.

A. I recall the testimony.

Q. If I asked you the same questions in rela-

(Testimony of Edward LeRoy Menges.)

tion to the point of time fixed by Mr. Pineda as the second instance where this was pulled off on Colonel Hand, would your answers be substantially the same?

A. Yes, and I could explain, too, Mr. Sullivan.

Q. You go ahead and explain.

A. Because Colonel Hand would never tell anyone that his inspection was accepted until after he had looked at all of his eggs, and then he would proceed to stamp up his eggs and you would know that the lot was accepted when he put his stamp on the lot of eggs. As far as switching eggs like that, it would be impossible. It would require too much time.

Q. Was he a pretty tough inspector?

A. My opinion?

Mr. Sullivan: I will withdraw the question.

Mr. Pineda testified that this particular lot which was first designated to Colonel Hand in February of 1941, and which was the same lot again designated to him to have his samples drawn from it two or three days later, was used five or six times to pull this over on Colonel Hand. Do you recall that testimony?

A. I recall his testimony.

Q. Do you recall that having occurred?

A. No, sir.

Q. Did you ever see a lot of fresh eggs resubmitted to the Army or to Colonel Hand five or six times, and on each time after he had drawn his samples, storage eggs, or other eggs were substi-

(Testimony of Edward LeRoy Menges.)

tuted, so that in effect he was having the same lot of fresh eggs submitted to him five or six times over a period of time in February, 1944? Did you ever see that? A. No, sir.

Q. Now, in addition to the incident in June, or, as Mr. Pineda put it, around June of 1944, Mr. Pineda testified in court here that in 1939—and I can't give it to you any better because that is how he designated the time—in 1939, after Colonel Foster had designated certain samples, or had drawn certain samples in cases of eggs or in lots of eggs that were submitted to him for inspection, that you and Mr. Pineda or Mr. Goddard took a brush and ink, like the brush and ink that Colonel Foster used, and you dabbed a similar mark on other cases of eggs which contained a specially prepared high quality of egg, and then submitted those samples for the samples Colonel Foster had drawn?

Mr. Pratt: If the Court please, in interrogating the witness, Mr. Sullivan has repeatedly used the name "Colonel Foster," asking whether this or that occurred in Colonel Foster's presence, and we recalled the witness Pineda and he made a correction so far as his use of the name Colonel Foster was concerned, saying he was mistaken, that it was Colonel Kielsmeier and not Colonel Foster in each instance. I think that is the substance of his correction.

Mr. Faulkner: Mr. Pratt overlooks the fact that even on the morning that Mr. Pineda corrected the name Foster, after he had gone out to see Mr. Kiels-

(Testimony of Edward LeRoy Menges.)

meier on that very day, he used the name Foster. It is for the jury to determine whether he meant Foster or he mean Kielsmeier. They do not have to believe either.

Mr. Pratt: That is very true.

Mr. Faulkner: In other words, his testimony in this record has the name "Colonel Foster" in it at least a hundred times, and then he came and said on another day after he had been out to see Colonel Foster, on that morning after he had seen him on the week end he described Colonel Foster in the plant, and then he came in here and said, "When I said Foster I meant Kielsmeier." He said both. So the particular evidence is directed to the evidence when Colonel Foster did those things.

Mr. Sullivan: Furthermore, may I add to Mr. Faulkner's comment that when I directed the witness' testimony to the [3554] particular excerpt from the evidence, it is accurate, just as it is in the evidence on direct examination.

The Court: Whether it is accurate or not is a matter for the jury to determine.

Mr. Pratt: I understand perfectly it is a matter for the jury, the credibility of all witnesses, but my complaint now is it does not seem fair for Mr. Sullivan to form his questions as he does, under the assumption that it was Foster, whereas there is certainly some evidence and, to my mind, conclusive evidence, that it was Kielsmeier and not Foster.

(Testimony of Edward LeRoy Menges.)

Mr. Faulkner: He was four days and a half with Colonel Foster.

The Court: There is nothing before the jury and the court with relation to any ruling. I am going to allow the testimony to go to the jury and let the jury determine for themselves the credibility of each and every witness. The jury may take a recess.

(Recess.)

Mr. Sullivan: Mr. Reporter, will you read the last question?

(Question read.)

Mr. Sullivan: Q. Will you answer that question, please? A. I did not.

Q. Did you ever see anybody do such a thing?

A. I have not.

Q. Did you ever give instruction to anyone to do such a thing? [3555] A. No, sir.

Q. At this time—and this is during the year 1939.—did you see Army inspectors come into the plant of Nye & Nissen? A. I have.

Q. Can you name one or two inspectors whom you saw come in at that time?

A. Colonel Kielsmeier and Colonel Kitchner. There were quite a few of them.

Q. Do you recall at this time any others?

A. Not what I had not named before.

Q. Now, you named them before in connection with the incident in 1941, isn't that correct?

A. Well, yes, sir.

(Testimony of Edward LeRoy Menges.)

Q. Was Colonel Hand in the plant during 1939, if you recall?

A. I don't believe he was.

Q. Whoever they might have been, these Army inspectors, in 1939, did you ever see such a thing happen as Mr. Pineda described in his testimony?

A. I have not.

Q. Did you ever do such a thing in the year 1939? A. No, sir.

Q. Did you ever see anybody else do such a thing? A. No, sir.

Q. In connection with this incident, Mr. Pineda testified that in his presence you asked Mr. Goddard to buy you some ink and a brush like Colonel Foster's. Do you recall that testimony.

A. I recall the testimony.

Q. Do you recall any such conversation as having occurred? A. No, sir.

Q. Did you ever ask Mr. Goddard to buy you ink and a brush or [3556] ink or a brush so that you could imitate Army labels or Army marks?

A. I do not.

Q. Did you ever have such a conversation with Mr. Goddard at any time during 1939 in connection with any Army inspector, whatever his name was?

A. No, sir.

Q. Mr. Pineda testified that it was this brush that you requested Mr. Goddard to buy and this ink which you requested him to buy that was used to imitate the samples on the cases; and he described that brush. Do you recall that testimony?

(Testimony of Edward LeRoy Menges.)

A. Yes, sir.

Q. Do you recognize the brush which he described?

A. It would be a stenciling brush.

Q. And was there a stenciling brush on the plant of Nye & Nissen in the year 1939?

A. Mr. Goddard has one around his office and Mr. Pineda also had one in the breaker room.

Q. What did Mr. Pineda use his brush for at that time in the breaker room?

A. He would use it to steneil the tops of the cans of eggs.

Q. Mr. Pineda testified with respect to this incident, Mr. Menges, that some of the cases that were selected by Colonel Foster, both his dabbing them with a brush and ink, were so-called samples or sample cases that had been especially prepared by you and Mr. Pineda and had little marks on them, little secret marks to distinguish them. Do you recall that testimony?

A. I recall the testimony. [3557]

Q. Did you in the year 1939 ever prepare, either alone or with Mr. Pineda, special cases of eggs to be submitted to an inspector as a substitute for the samples which he actually drew from the lot? A. I did not.

Q. Did Mr. Pineda ever do such a thing?

A. No, sir.

Q. Did you ever see anybody at Nye & Nissen do such a thing? A. I did not.

(Testimony of Edward LeRoy Menges.)

Q. Did you ever instruct anybody at Nye & Nissen to do such a thing? A. No, sir.

Q. Did anybody ever give you any instructions to do such a thing? A. No, sir.

Q. And if I asked you the same questions that I have just asked you on these secret marks with respect to an inspection during 1939 by any Army inspector, no matter what he called himself, would your answers be substantially the same?

A. They would.

Q. Did Mr. Goddard, during 1939, ever give you any directions to take a brush and ink which he produced for you, or any brush and ink, and to dab special cases so that they would look like the cases which an Army inspector had stamped for the substitution of samples? A. No, sir.

Q. I asked you in connection with the incident where the Army or Colonel Foster inspected eggs during the year 1941, around June of 1941, and you described to the ladies and gentlemen of the jury just how, when requested, you got the samples and brought them back to the candling room for the Army and took [3558] them back to the lot. If in connection with an inspection by the Army during the year 1939 I asked you for some practices with respect to taking cases of eggs from the lot that were drawn by inspectors of the Army back to the candling room and with respect to the cases bearing an Army inspection and returning them to the lot, if I asked you substantially the same

(Testimony of Edward LeRoy Menges.)

questions as to your practices in 1939 would your answer be substantially the same?

A. Yes, sir. It would always be the same.

Q. Did you ever, when requested to take samples that the Army had drawn from a lot designated for inspection—did you ever during 1939 put other samples in place of the samples that the Army men told you to take? A. No, sir.

Q. Did you ever fail, when asked by an Army man, an Army inspector, to take the samples which he had drawn for him down to the candling room, did you ever fail to take the cases which he had designated? A. I did not.

Q. Mr. Menges, Mr. Pineda testified that before this incident of the brush to which I have referred, that this substantially took place: That not having a brush, when Colonel Foster was in the candling room, you would take the labels off the cases which bore his identifying mark and put them on other cases of eggs which were of a superior quality and prepared for the purpose of submitting them as samples, and substitute the special previously prepared samples to the colonel in the sampling room; do you recall that testimony?

A. Yes, sir. [3559]

Q. During this time, during the year 1939, when Colonel Foster or any Army officer, whatever his name, went into the candling room, did you give him the samples that he directed you to bring down and that he had marked?

A. He would always do that.

(Testimony of Edward LeRoy Menges.)

Q. Did you ever put any other samples in the place of the samples that the Army inspector selected? A. No, sir.

Q. Did you ever take the labels off of the cases which bore the special mark or identifying mark of an Army inspector and transfer them to other cases? A. That would be impossible.

Q. Have you had experience in removing labels from wooden egg cases? A. I have tried it.

Q. Is it a pretty hard job?

A. Well, you would deface the label or tear it. It is almost impossible to get them off.

Q. Suppose that you would assume that it had to be done quickly; would that, in your opinion, from your experience, increase the difficulty?

A. You could never do it in a hurry. You would have to take your time.

Q. At any rate, whatever its difficulty or ease, did you ever do such a thing?

A. No, sir.

Q. Did you ever instruct anybody to do such a thing? A. No, sir.

Q. With reference to an inspection by Colonel Foster or Colonel Kielsmeier, or any kind of an Army officer, no matter what he called himself, did you ever do such a thing? A. No, sir.

Q. Did you ever see it done? A. No, sir.

Q. Mr. Pinckney testified that in his presence you, in substance, [3560] went up to Mr. Goldstad and said that Colonel Foster was complaining too much about the paste of the labels, after you had taken

(Testimony of Edward LeRoy Menges.)

labels off the cases that he had selected and put them on cases that you wanted to substitute. Do you recall that testimony?

A. I recall the testimony.

Q. Did you ever have a conversation with Mr. Goddard? A. No, sir.

Q. Did you ever say anything along these lines to Mr. Goddard, that you could not work the substitution that way because you had to put too much paste on the labels? A. I never did.

Q. I think you testified that sometimes when the Army came in or Army inspectors, he would have more than one man—in other words, it would be more than himself, is that correct?

A. There would always be more than one.

Q. Would you say that that was true in the latter part of 1939? A. At all times.

Q. In the latter part of 1939 what is your recollection as to the number of men that would come in with the Army inspector?

A. There would always be an inspector and enlisted men, or there would be two or three officers and the inspector, maybe a couple of enlisted men.

Q. During the latter part of 1939 do you have any recollection as to what these extra personnel, whether they were officers or enlisted men, what they did when they went down to the candling room with the Army inspector?

A. Well, I would say [3561] that they were students.

Q. Students? A. Mostly.

(Testimony of Edward LeRoy Menges.)

Q. Where did they stay? Withdraw that question. What position did they take when they went down there? A. You mean the men?

Q. The men that went with the inspector.

A. Some of them would stay outside, talk to me, and the rest of them would go with the inspector on the inside of the room.

Q. During the latter part of 1939 did you ever get one of those men who were outside the candling room, while inspectors were inside the candling room candling, get him to leave his position and leave that vicinity and then while he was away switch eggs? A. No, sir, I did not.

Q. Did you ever see that done?

A. No, sir.

Q. Mr. Pineda testified in the courtroom that while you and he and Mr. Goddard were present, and Colonel Foster was present with a couple of lieutenants and a sergeant, and after he had selected some eggs, Mr. Goddard had the sergeant go out and move his automobile, and while he was out you people switched the eggs. Do you recall that testimony?

A. I recall the testimony.

Q. Do you recall that incident ever having occurred? A. No Sir.

Q. Did it occur? A. No, sir.

Q. Did you ever participate in any such transaction? A. I did not.

Q. Did you ever hear Mr. Goddard have a sergeant corresponding [3562] to the sergeant that I

(Testimony of Edward LeRoy Menges.)

have just mentioned to you, leave the outside of the candling room and then proceed to switch eggs on an Army inspector? A. I did not.

Q. Mr. Pineda testified that substantially the same thing was repeated from four to seven days later on upon the excuse of Mr. Goddard that the Army man should go up and have a drink. Do you recall that testimony?

A. I don't recall the testimony.

Q. Do you recall any switching of eggs ever having occurred under those circumstances?

A. No, sir.

Q. Now, Mr. Menges, have you at any time while you were working at the plant of Nye & Nissen on Townsend street, used a stamp of the United States Department of Agriculture?

A. Only in the presence of the inspector.

Q. Have you done that on one or many occasions? A. On many occasions.

Q. And under what circumstances would you do such a thing?

A. Where I would be assisting the inspector with his inspection, after he was through with his inspection, and if he asked me to stamp the lot of eggs, I would do so.

Q. Did you, on the occasions when he requested you, carry out his instructions? A. Yes, sir.

Q. Did you ever stamp anything that was not supposed to be stamped? A. No, sir.

Q. Did you ever stamp labels which were not attached to cases [3563] with the stamp when the

(Testimony of Edward LeRoy Menges.)

Department of Agriculture inspector instructed you to stamp cases? A. I did not.

Q. From whom did you get the stamp on any of the occasions that you used that stamp?

A. From the inspector, or maybe he had gave it to Mr. Goddard and Mr. Goddard had requested me to stamp the lot.

Q. But at any time that you were stamping them, would you say that there was an inspector present on the floor?

A. He was always present.

Q. Did you ever use a stamp on Townsend Street purporting to be a United States Department of Agriculture stamp which was in fact counterfeit or spurious? Did you ever use that kind of stamp? A. I did not.

Q. Did you ever have such a spurious stamp or counterfeit stamp in your possession?

A. I did not.

Q. Did you ever see such a stamp in anybody else's possession? A. I did not.

Q. Did Mr. Goddard ever give you a stamp which was a counterfeit stamp of the United States Department of Agriculture? A. He did not.

Q. Did you ever, incidentally, use an Army stamp? A. I never did.

Q. Mr. Pineda testified that you used the stamp, and also testified that you used the stamp around Christmas of 1938. Do you recall that testimony?

A. I recall the testimony. [3564]

Q. Did you ever use any stamp purporting to

(Testimony of Edward LeRoy Menges.)

be a Department of Agriculture stamp which was not a Department of Agriculture stamp, but a counterfeit, or a spurious one, in Christmas of 1938, or at any time in your life?

A. I did not.

Q. Mr. Pineda testified, Mr. Menges, that in the fall of 1941 at the plant of Nye & Nissen on Townsend Street, while you were present and he was present, and Mr. Goddard was present, an Army inspector handed out an Army stamp to Mr. Goddard and Mr. Goddard and Mr. Pineda began to stamp lots of egg which were not supposed to be stamped, and also loose labels. Do you recall that testimony?

A. I recall the testimony.

Q. Do you recall that incident as having occurred? A. It never did.

Q. There was some testimony in this case that Government stamps were buffed off cases. Do you recall that testimony? A. Yes, sir.

Q. Let me ask you this question: Did you ever buff a case? A. Yes, sir.

Q. Did Nye & Nissen have a buffer for that purpose? A. We did.

Q. And when you buffed a case what did you do?

A. We would buff marks off the end of the case or stencils off the side of the case.

Q. Did you ever buff Government stamps off the case? A. I have.

Q. Did you ever buff Government stamps off of cases, for instance, [3565] in early 1942?

(Testimony of Edward LeRoy Menges.)

A. I could have.

Q. Mr. Menges, was there an occasion for you to work at night while you were down at Townsend Street? A. Very few occasions.

Q. Do you recall having worked at night in the month of November, 1941?

A. I do not recall the instance.

Q. Can you state whether you were working at night sometime around November of 1941?

A. I might have.

Q. Do you recall any particular incident?

A. I do not.

Q. Did you ever work at night for the purpose of transferring eggs? A. I might have.

Q. Did you ever transfer eggs out of cases?

A. Yes, sir.

Q. Was that done on one occasion or many occasions? A. On many occasions.

Q. Was it done during the working hours, the day time working hours?

A. Generally during the day time.

Q. Would you say that the practice of transferring eggs out of cases was done during day time working hours, for instance, in November of 1941?

A. It might have.

Q. Assuming that transfers of eggs were made in November of 1941 during the work day; were they done openly or secretly in your plant?

A. It was openly.

Q. From whom, if from anybody, did you get instructions with respect to transferring eggs?

(Testimony of Edward LeRoy Meggs.)

A. Mr. Goddard would give me the instructions.

Q. And then did you carry out those instructions?

A. I would. [3566]

Q. When you used the expression, "Transfer eggs," would you just tell us very briefly what you mean by that?

A. You would take the eggs by fillers. You would take the mapes and the filler and the eggs, which would contain three dozen, and place them into another case.

Q. When you lift those up do you lift them up three dozen at a time? A. You do.

Q. Assuming that you have a case that you are transferring out of, just briefly, how would you pick the eggs out of those cases?

A. You would put your hands along the side of the case, grab the corner of the mape and the filler with your thumb, squeeze them together a little, pick it up and drop it right down into another case.

Q. Did your candlers ever do that?

A. Yes, sir.

Q. Did you give them instructions to do that?

A. I did.

Q. Assuming you had a transfer operation, would it be your recollection that that was your practice in November of 1941?

A. It might have been.

Q. When the candlers transferred cases at this time in November of 1941 where did they do it?

(Testimony of Edward Leroy Monges.)

A. In their position as a candler.

Q. And where would that be?

A. They would be inside the room and I would shove the eggs from outside of the room.

Q. Assume that you were going to, say, transfer 50 cases of eggs from one case of 50 into another case of 50; the full cases [3567] would be given to the candlers, would they? A. Yes, sir.

Q. Where?

A. On the outside of the bench, and the empty cases that they were to transfer into I would most generally take them inside of the room.

Q. In other words, do I understand your testimony that the cases that they were going to fill on the transfer operation were brought in all at one time?

A. Into the room, yes, sir, back to the candler.

Q. What would they do in the candling room with respect to transferring eggs out of the 50 cases you pushed through the slit?

A. They would pick them up a layer at a time, five layers on each side, and place them in the cases that I had given them.

Q. And the cases that they emptied, what became of those?

A. I would take them out of the room.

Q. Did they push them out through the slit, or would they push them somewheres?

A. No, they would push them out through the slit the same as a full case of eggs.

(Testimony of Edward LeRoy Menges.)

Q. Did you ever see Mr. Berman transfer cases of eggs? A. I never did.

Q. In November, 1941. A. I never did.

Q. Did you ever see Mr. Moncharsh transfer cases of eggs in November, 1941? A. No, sir.

Q. Did you ever see Mr. Goddard transfer cases of eggs in November of 1941?

A. I did not. [3568]

Q. Mr. Pineda testified that in November of 1941 there was a transfer of eggs after dinner upon the instructions of Mr. Goddard and Mr. Moncharsh—Mr. Goddard, Mr. Menges—yourself—Mr. Berman, Mr. Pineda, and Mr. Nix came back, and eggs were transferred. Do you recall that testimony?

A. I recall the testimony.

Q. Do you recall an occasion in November of 1944 when such an incident occurred?

A. Not with all those men present.

Q. Did you ever see, for instance, at any time in November of 1941, Mr. Moncharsh transferring eggs in the evening? A. I did not.

Q. Did you ever see Mr. Goddard transferring eggs in the evening? A. No, sir.

Q. Did you ever see Mr. Berman transferring eggs in the evening? A. I did not.

Q. Did you?

A. I could transfer eggs.

Q. Do you recall any particular incident in which you may have transferred eggs in November, 1941? A. No, sir, I do not.

(Testimony of Edward LeRoy Menges.)

Q. Generally speaking, during 1941 when you had occasion to bring your girls back for working what would be the character of the work that was carried on? A. Mostly candling.

Q. Mr. Menges, Mr. Pineda testified that in August of 1941 a similar incident took place when Mr. Goddard was present, Mr. Moncharsh, yourself, Mr. Menges, Mr. Nix, and Mr. Pineda, when a lot of eggs which had wire strapping on them was transferred [3569] by breaking the wire strapping, other eggs were put in the cases, and the cases were rewired. Do you recall that testimony?

A. I recall the testimony.

Q. Let me ask you first, Mr. Menges: You have told us here about transferring eggs, and you have described the operation by yourself and by the candlers under your supervision. When a transfer operation was made did it ever occur that when eggs were transferred out of one type of case to others that the first cases were filled with other eggs, or commodities? A. No, sir.

Q. When you transferred eggs what was the purpose, so far as you knew, of the transfer?

A. When the city customers would be short of eggs we would transfer out of stamped cases and turn them over to the City Sales.

Q. And if you ever transferred out of stamped cases did you do anything with respect to the Government stamp on the cases?

A. The Government stamp would be defaced.

Q. With respect to the transfer of eggs at this

(Testimony of Edward Jeffoy Menges.)

time, either in August 1941 or November of 1941, as your existing practice of transfer was then, was there any kind of operation in your plant where you transferred eggs out of cases into other cases and in the same operation put other eggs in the empty cases?

A. No, sir, you would never do that, Mr. Sullivan.

Q. Did you ever give any instructions to have such an operation carried on?

A. No, sir. [3570]

Q. Did you ever see such an operation carried on? A. I have not.

Q. I called your attention to an incident where this wire strapping was broken and the eggs were transferred out and other eggs were put in, and the cases were strapped again with wire. Do you recall that testimony?

A. I recall that testimony.

Q. Did that ever occur? A. No, sir.

Q. Under the normal procedure in your egg candling department with reference to the transfer of eggs, can you state whether any similar procedure of transfer ever occurred? A. No, sir.

Q. Can you tell us why that would not have occurred?

A. It would involve—well, we never did it, because there would be too much of a chance of a mixup in your different grades of eggs if you were transferring different grades of eggs.

Q. In other words, Mr. Menges, does a transfer

(Testimony of Edward LeRoy Menges.)

operation embrace one particular lot of eggs or more than one particular lot of eggs?

A. It would embrace one particular lot of eggs.

Q. And you never used one lot of eggs in a transfer and after the cases from which they were taken were empty insert other eggs in the same operation, is that correct?

A. That is correct.

Q. Did you, in August or November of 1941, Mr. Menges, ever take stamped cases which had been set aside for an Army order or wire strapped cases which had been set aside for an Army order, or some Government purpose, in either instance take the eggs out of those cases and put inferior quality eggs in there and substitute those for that order? A. No, sir. [3571]

Q. Did your ever see anybody do such a thing?

A. I did not.

Q. Did you ever give anybody instructions to do such a thing? A. No, sir.

Mr. Sullivan: If the Court please, I have reached a rather convenient breaking-off point.

The Court: I would like to get through with this witness.

Mr. Sullivan: All right, your Honor.

Mr. Faulkner: It will be another hour. He is a defendant.

The Court: What is that?

Mr. Faulkner: It will be an hour before we finish.

(Testimony of Edward LeRoy Menges.)

The Court: How do you know it will take an hour?

Mr. Faulkner: Because I know the subjects that are to be covered. He has only covered one count in the indictment.

The Court: How long before we will get through?

Mr. Sullivan: I am afraid, your Honor, it will take another hour.

The Court: The jurors may be excused until two o'clock.

(A recess was taken until 2:00 o'clock p.m.)

Afternoon Session, March 27, 1946, 2:00 p.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and in the box. Proceed.

EDWARD LeROY MENGES

recalled:

Direct Examination (resumed)

Mr. Sullivan: Q. Mr. Menges, Mr. Pineda testified that a certain quantity of butter was cut for the Army in February of 1942 and that you were present while the butter was being cut. Do you remember that testimony? A. I do.

Q. I believe you have told us that you were the

(Testimony of Edward LeRoy Menges.)

was foreman around this time at the plant of Nye & Nissen on Townsend Street; is not that the correct testimony? A. Yes, sir.

Q. Did you at any time around February of 1942 work in the butter room?

A. I might have.

Q. Incidentally, do you recall the particular instance that Mr. Pineda referred to?

A. No, I don't recall.

Q. When you worked in the butter room around February of 1942, from whom did you receive your instructions to work there? A. Mr. Goddard.

Q. On the occasions when you worked in the butter room in February of 1942 were you ever working there when butter was cut for the Army?

A. I could have been. [3573]

Q. On occasions when you were working there while butter was being cut for the Army was there an Army inspector present in the butter room?

A. Yes, sir.

Q. When you worked in the butter room what particular type of work did you do around February of 1942?

A. I could have precut the butter or pushed it into the hopper or took it out from the roller after it was packed.

Q. At the time while you were working in the butter room in February of 1942, having in mind the occasion that you referred to, where would the butter come from that was being cut for the Army in the butter room?

(Testimony of Edward Leroy Menges.)

A. It would come from the cooler.

Q. Who would bring it from the cooler?

A. Mr. Goddard.

Q. When Mr. Goddard brought the butter from the cooler where did he bring it that you observed?

A. He would bring it to the door of the butter room.

Q. How many doors were there to the butter room? A. Two doors.

Q. Would you mind coming down here, Mr. Menges, to this illustration? I will ask you to draw a room similar to the butter room that is drawn here by Mr. Berman. Will you draw just the butter room itself out to the left of this diagram?

(Witness draws sketch.)

Q. Mr. Menges, having in mind that the lower portion of the diagram that you have drawn will be in the direction of [3574] Bluxome Street and the upper portion of the diagram is in the direction of Townsend Street, I will ask you to indicate on the diagram what, if any, doors that butter room had around February, 1942?

A. It contained two doors, a small door there and a larger door here.

Q. Now, will you indicate the larger door? You have done that? A. Yes.

Q. Let me mark that, Mr. Menges, please, as being m-2, being the spot where the witness has indicated the larger door to the butter room was, and will you now mark another line indicated by an arrow as occupied by the smaller door to the

(Testimony of Edward LeRoy Menges.)

butter room, and we will mark that, if the Court please, m-3, to indicate the smaller door to the butter room.

Mr. Menges, the smaller door then was the direction nearer Townsend Street, was it?

A. The small door was nearer Townsend Street, the nearer door.

Q. Do you know with respect to the position of either one of those doors where the pre-cutting machine was in this butter room around February, 1942?

A. It was in front of the larger door.

Q. Will you put a circle or a square in the general location of the pre-cuting machine? May we, if the Court please, just mark that as m-4 to indicate the rectangle the witness has drawn to indicate the pre-cutting machine?

Now, Mr. Menges, immediately to the rear of the precutting [3575] machine—I will withdraw that question.

Where was the butter cutting machine itself with respect to the pre-cutting machine?

A. It was right back of the pre-cutting machine.

Q. Will you put a little square or circle there to indicate the butter cutting machine? May the diagram as drawn by the witness be marked m-5 to indicate the position of the butter cutting machine?

Mr. Menges, I will ask you to go back to the stand, please.

A. Surely.

Q. When Mr. Goddard brought the butter to

(Testimony of Edward LeRoy Meiges.)

the double doors which you have indicated here as 3, what was done with the butter?

A. It was taken into the room to precut.

Q. Now, when the butter was taken into the room was it taken in on something?

A. On trays with a dolly.

Q. How much room was there in the area before the precutting machine for the trays?

A. Would be just enough room for the trays of butter.

Q. Assuming that this was a cutting operation for a shipment to the Army, was anything done by any Army inspector with the butter before it was precut? A. It would be scored.

Q. On this particular occasion in this particular matter did the Army man do anything?

A. Yes, sir. He would check each cube against the list for the churn number, against a list [3576] that was prepared by the inspector.

Q. At the time did you ever see anybody in the employ of Nye & Nissen proceed to precut butter before an Army inspector or an Army man had checked the churn lists? A. No.

Q. After the Army inspector had checked the churn lists, what was done with the butter?

A. Then it was precut.

Q. After it was precut where did it go?

A. Then it would be ready to feed into the hopper.

Q. After it was fed into the hopper, where did it go?

(Testimony of Edward LeRoy Menges.)

A. It would come out cut into cubes and then would go to the wrapper.

Q. Before it got to the wrapper did anything happen to it?

A. It would be cut by a man or a woman who would be the butter cutter.

Q. After the butter cutter got through cutting the butter did he do anything with it?

A. He would weigh a certain amount of butter as it came through the machine.

Q. After the butter was cut and weighed what happened to it?

A. It would go to the girl that was wrapping the butter.

Q. After she wrapped the butter what did she do with it?

A. They would put it back on the conveyor and it would go to the end of the conveyor to be packed by a girl packing the butter.

Q. Would you just draw two lines to show the general direction, Mr. Menges, of the course of the butter after it left the [3577] nozzle of the butter cutting machine and until the time that it came to where the girl put it into the boxes and packed it?

A. There would be a wrapping table——

Q. Could we indicate the wrapping table which you have drawn by m-6? Would you indicate the course of the operation of this butter after the wrapping table and until the place where the girl put it into boxes?

A. There would be a belt running down the cen-

(Testimony of Edward LeRoy Menges.)

ter of this table, runs on a motor, and the butter would feed from the machine onto this belt.

Q. In other words, where the girl was who put the butter in the box?

A. The girl who was packing the butter would be stationed there.

Q. May we indicate as m-2 the position where the butter apparently was—Where did the butter leave the butter room at the time, Mr. Menges?

A. Through the door near Townsend Street with a roller.

Q. Was there a metal roller?

A. It was a metal roller with wooden rollers.

Q. In other words, if you put force on the end of that roller could you push it along the roller?

A. It was on a slant, the floor.

Q. Then the products came out the place that is indicated here as m—I think it was m-2, to indicate the small door—is that where it came out?

A. Yes.

Mr. Faulkner: M-2 indicates the large door.

Mr. Sullivan: Is it? May we make the correction then with the Court's permission, and Mr. Pratt, so the record will be clear, wherever the witness has referred to the smaller door nearer Townsend Street—that is what, Mr. Faulkner?

Mr. Faulkner: M-3.

Mr. Sullivan: And the larger door is m-2.

Mr. Faulkner: Yes.

Mr. Sullivan: Q. Mr. Menges, when the butter was brought to the larger door, which was indi-

(Testimony of Edward LeRoy Menges.)

called as m-2, was anything brought to the smaller door at that time? A. An empty tray.

Q. What happened to the butter after it came out of the butter room?

A. It would be placed on this empty tray.

Q. When the tray was filled then what happened to the tray?

A. You would pull it off the floor and Mr. Goddard would put it back in the cooler.

Q. Mr. Menges, when the complete contents of the tray of butter which had been brought, as you have testified, to the door m-2 from the cooler or freezer, when that had been completely cut would anything be done about bringing other butter?

A. If that did not complete the order, why, there would be other butter brought.

Q. Would that be brought in in a similar fashion? A. Yes.

Q. When the other butter was brought in did anybody do anything with respect to checking churn numbers?

A. The Army inspector that was present, he would check the churn numbers. [3579]

Q. On any of the occasions when you worked in this butter room, Mr. Menges, around February of 1942, while butter which had been taken from the freezer or cooler and the churn numbers of which had been checked by the Army man, while that butter was being cut did you ever see anyone take any other butter and mix it into the cutting operation? A. No, sir.

(Testimony of Edward LeRoy Menges.)

Q. Did you ever see at any time that you were working in that butter room any butter other than the butter which was approved and the churn numbers of which were checked by the Army man brought into the butter room in connection with that operation? A. No, sir.

Q. Mr. Menges, did this ever happen: When the butter got to the end of the—I will withdraw that.

Mr. Menges, I will ask if while you were working in the butter room around February of 1942, you ever saw butter already cut in prints brought into the spot where you have designated the packer in m-7 and mixed with butter which was being cut for an Army order? A. No.

Q. Did you ever see other butter brought into any particular part of that butter room at the time?

A. That would be imposible, Mr. Sullivan, because the Army inspector was always present.

Q. You say that once in a while you were a pusher? A. Yes.

Q. What does a pusher do.

A. The pusher would take the precut butter and push it into the hopper by the butter cutter.

Q. The hopper performs what function for the cutting of butter?

A. It would pack it solid. There would be a worm in the hopper and this worm would pack the butter solid and push it through the nozzle of the butter cutting machine.

(Testimony of Edward LeRoy Menges.)

Q. At the end of the nozzle then the butter came out? A. Yes.

Q. Does it look like the 1-pound prints of butter we usually see in the stores when it comes out?

A. No. It would be square.

Q. It would be square? A. Yes.

Q. Then would there be a cutting operation to that square of butter. A. Yes.

Q. What did the butter cutter do with the butter that was being pushed out of the hopper?

A. He would cut it into lengths of a pound.

Q. How did he do that?

A. He works with a kind of handle and he would pull it down with three wires attached to it and it would cut two 2-pound cubes at one time.

Q. During this time, in February, 1942, did you ever work in this butter room as a pusher when Mr. Pineda was a cutter? A. Yes, I have.

Q. When you were in that position were you near Mr. Pineda?

A. He was right alongside of me.

Q. Did you ever see Mr. Pineda on those occasions do anything with respect to weighing butter?

A. He would weigh butter occasionally, yes, as it came from the cutting machine. [3581]

Q. Did you ever see him short weight butter?

A. I did not.

Q. Mr. Menges, you heard Mr. Pineda's testimony here in court with respect to the short weighting of butter in February of 1942, did you not?

A. Yes.

(Testimony of Edward LeRoy Menges.)

Q. Do you recall that testimony?

A. I do.

Q. Did that ever happen at any time while you were working in that butter room?

A. It did not.

Q. You saw the demonstration which he gave here with the scale, did you not? A. I did.

Q. Do you recall that? A. Yes.

Q. Did you ever see on any occasion that demonstration or an operation equivalent or similar to that demonstration while you were working in that butter room? A. I did not.

Q. Now, did the Army man who was in this room stay in one position?

A. No, he was all over the room.

Q. Did he do anything with respect to the cases that had been packed with one-pound wrapped prints of butter at any time?

A. Yes, he did.

Q. What did he do?

A. He would stamp those cases.

Q. What did he stamp them with?

A. With the Veterinary stamp of the Army.

Q. After he stamped those cases what happened to them?

A. They would go to the end of the roller and be placed on the tray provided for that.

Q. Then what happened to them?

A. After it was full, why, [3582] he would check and make sure that they were all stamped.

(Testimony of Edward LeRoy Menges.)

Then it would be taken away and placed back in the cooler.

Q. At any time while you were working in this butter room around February of 1942, did you ever see Mr. Goddard come into the butter room and get the Army inspector or an Army man, any of the Army personnel to leave the room for fifteen or twenty minutes, or any substantial length of time, and during that time bring in rejected butter or butter that was not accepted or approved as to churn number? A. I did not.

Q. You heard Mr. Pineda's testimony about that in this court, didn't you? A. I did.

Q. Mr. Pineda, during any of the occasions that you worked in this butter room——

A. My name is not Pineda.

Q. I am sorry. I withdraw that question.

Mr. Menges, at any of the times you were working in this butter room when butter was being cut for the Army and after the butter had been brought in at the position of the double doors which you indicated as m-2 and that butter was cut, did you ever see any other butter but the butter which was brought in and approved by the Army stamped by an Army inspector?

A. No, sir, I have not.

Q. Mr. Menges, I have asked you about the use of a Government stamp and I want to ask you a few more questions with respect to that as pertains to the testimony of Mr. Andrade. Do you recall the testimony of Mr. Andrade? A. I do.

(Testimony of Edward LeRoy Menges.)

Q. Mr. Andrade testified that he saw you use a spurious stamp of the Department of Agriculture on many occasions between 1938 and the time he left the employ of Nye & Nissen, some time in November, 1940. Do you recall that testimony?

A. I recall the testimony.

Q. Did you ever at any time have such a spurious stamp of the Department of Agriculture?

A. I did not.

Q. Do you remember Mrs. Josephine Briant, who testified here almost at the conclusion of the Government's case?

A. She was at one time one of my egg candlers.

Q. Do you remember the incident in 1940 when Mrs. Briant was candling at the plant of Nye & Nissen on Townsend Street in San Francisco?

A. Only from her testimony.

Q. Do you recall that she worked as an egg candler under your supervision in San Francisco?

A. I remember that she did.

Q. Pardon me? A. That she did.

Q. At any time while she was working under your supervision did you ever tell Mrs. Briant to take the cases which had been inspected—withdraw that question.

At any time during the fall of 1940 or around that time did you ever instruct Mrs. Briant to switch eggs from cases which had been stamped, inspected and marked for the United States Army and to take those eggs out and to put inferior eggs into the case? A. No, I did not.

(Testimony of Edward LeRoy Menges.)

Q. Did you ever give any instructions of that nature to anybody [3584] during the time that she was there? A. No.

Q. Mr. Menges, I will show you U. S. Exhibit 113 in evidence, purporting to be a typewritten invoice of certain commodities including eggs delivered to the steamship William S. Clark and ask you to examine that. Have you examined it?

A. Yes.

Q. Did you ever see this invoice before?

A. I never have.

Q. Did you have anything to do with the preparation of this invoice? A. I did not.

Q. Did you have any conversation with anybody in your lifetime about the preparation of this invoice? A. I did not.

Q. Did you handle the commodities that you know of—I withdraw that.

To your knowledge did you have anything to do with filling this order? A. I did not.

Q. Do you know whether the items set forth in this invoice, which is U. S. Exhibit 113 in evidence, are true or false? A. I do not.

Q. Do you know how these items were prepared?

A. I do not.

Q. Do you know anything about them?

A. I do not.

Q. Mr. Menges, I will show you U. S. Exhibit 65 in evidence, which purports to be a typewritten invoice of Nye & Nissen with respect to a ship-

(Testimony of Edward LeRoy Menges.)

ment to the vessel John Muir, and I will ask you to examine that. Have you examined it?

A. I have.

Q. Did you have anything to do with the preparation of this invoice? A. I did not.

Q. Did you have anything to do with the filling of this order as indicated on this invoice?

A. No, sir.

Q. Did you give any instructions in connection with this invoice? A. I did not.

Q. Or of the order represented by it?

A. No.

Q. Did you have any conversation ever in your lifetime with anybody about the items set forth in this invoice? A. I did not.

Q. Do you know whether the items set forth in this invoice are true or false?

A. I do not.

Q. Do you know anything about the items in this invoice? A. No, sir.

Q. Mr. Menges, I will now show you U. S. Exhibit 57 in evidence, purporting to be a typewritten invoice covering a shipment to the steamship Cape Pillar. I will ask you to examine that exhibit. Have you examined that? A. Yes.

Q. Do you know anything about this invoice?

A. I do not.

Q. Did you have anything to do with the preparation of this invoice? A. I did not.

Q. Did you have anything to do with the filling of the order represented by this invoice?